(1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CG)

Second Appeal No. 603 of 2004 Single Bench

(Memorandum of Second Appeal U/s 100 of C.P.C.)

APPELLANTS : 1. Nirmala Nanda Wd/o Late Shri Manikchand Nanda, aged about 70 years .

2. Vipin Chand Nanda S/o Late Manik Chand Nanda, aged about 42 years.

Both resident of Near Pavan Talkies, Main Road, Korba (CG).

P.R. No. 893/04 Presented on 31.K. Delhi dated 23/12/04

Versus

RESPONDENTS : 1. Radheshyam Modi S/o Dhanraj Modi, aged about 63 years, r/o Sadar Bazar, Champa, District Janjgir Champa (CG).

2. Arun Joshi, Joshi Photo Copiers, Infront of Pavan Talkies, Main Road, Korba (CG).

MEMORANDUM OF SECOND APPEAL UNDER SECTION 100 OF C.P.C.

(39)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 603/2004

Appellants — Nirmala Nanda and another.

Versus

Respondents — Radheshyam Modi and another.

Shri Y.C.Sharma counsel for the appellants.
Shri G.K. Beriwal counsel for the respondents.

JUDGMENT

(Passed on 17-3-2005)

The appellants/defendants have preferred the instant appeal against the judgment and decree dated 3.12.2004 passed by Additional District Judge Korba in Civil Appeal No. 19-A/2001 whereby the judgment and decree dated 27.7.2001 passed by Civil Judge Class I Korba in Civil Suit 36-A/2000 has been confirmed.

2. The suit of the plaintiff / landlord for eviction has been decreed by the trial Court on the ground of non payment of rent under section 12 (1) (a) and on the ground of sub tenancy under

section 12 (1) (b) of the Chhattisgarh Accommodation Control Act (hereinafter referred to as Act for brevity) and also on the ground of bona fide requirement of the plaintiff for opening a shop and for the purpose residence, which has been subsequently confirmed by the first appellate Court.

3. The case of the plaintiff before the trial Court was that the house in question is recorded in the name of his mother which was let out by the plaintiff to the defendant No.1 on monthly rent of Rs. 350/- in which he was carrying on the business in the name of Nanda Rui Bhandar and was also residing in the remaining part of the said accommodation. However, part of the accommodation was rented by defendant No.1 to defendant No.2 on monthly rent of Rs. 750/- who is carrying on the business in the name of Joshi Photocopiers. The defendant defaulted in paying rent from November 1994 to June 1996 totaling Rs. 7000/-. It was also the case of the plaintiff before the trial Court that he required the suit accommodation for his bona fide requirement of his son Anil Kumar who desired to run his business at Korba and that he did not have any reasonably suitable alternative accommodation except the suit accommodation in Korba town. Registered notice was sent to the defendants on 8.7.96 but the defendant refused to accept the same and therefore the suit was filed by the plaintiff on the aforesaid grounds.

4. The defendants in their written statement stated that the rent of the house was initially fixed at Rs. 100/- per month but subsequently the same was increased. The defendants have further stated that the plaintiff did not get the necessary repair work done in the suit house and when the condition of the house became

dilapidated the defendants got it repaired by spending Rs. 50,000/- on the promise of the plaintiff/landlord to adjust the same against the rent. The allegation of sub tenancy was however denied by the defendant. It was submitted that they paid the rent but the plaintiff refused to accept the same. The defendant No.2 was proceeded ex parte before the trial Court.

5. Learned counsel for the appellants submits that so far as the ground taken under section 12 (1) (a) of the Act is concerned, from the pleadings of the plaintiff itself it is evident that the notice was sent to the defendant on 8.7.1996 and the suit was filed on 1.8.1996. Thus the suit under section 12 (1) (a) of the Act was premature as the same was filed before the expiry of the statutory period of two months after the notice as required under section 12(1)(a) of the Act and thus suit could not be decreed under section 12 (1) (a) of the Act.

6. The instant objection is taken by the defendant for the first time at the time of argument. After perusing the records of both the Courts below, the plaint and written statement it is evident that the defendant at no point of time raised this dispute by way of preliminary objections and this was not an issue either before the trial Court or before the First Appellate Court. Even in the substantial questions of law proposed by the appellants/defendants in the memo of second appeal this objection does not find place.

7. Learned counsel for the respondents submitted that the suit is based on the ground of bona fide requirement of the plaintiff and arrears of rent and therefore, the objection of the plaintiff in this regard is untenable at this stage. It is further submitted by the counsel for the respondents that even after the institution of the suit

and service of notice by the Court, the appellants/defendants have neither tendered the rent nor deposited the same in the Court which has been admitted by the defendant in paragraph 16 of his deposition that after filing of the suit he has not paid the rent for last 1 ½ - 2 years though he tendered the rent through money order but no receipt has been filed.

8. In view of the above both the courts below have recorded the concurrent finding that the defendant has defaulted in payment of rent and passed the decree of Rs. 7000/- towards arrears of rent. Thus considering the fact that the suit for eviction was filed on the ground of non payment of rent, for bona fide necessity of the suit accommodation, the sub tenancy and the fact that the tenant never raised this objection before the Courts below, I am of the opinion that the objection raised by the defendant in this regard can not be entertained at this stage.

9. The second objection raised by the appellant is that the Courts below have heavily relied on the statement of PW-1, the Branch Manager of the Bank who has stated on oath that defendant No.2 had obtained loan from his bank by submitting the lease deed executed by the land lord Vipin Chand Nanda son of late Manikchand Nanda.

10. Learned counsel for the appellants submitted that both the Courts below relying on the statement of PW-1 have held that the suit accommodation was given on rent by the defendant No. 1 to defendant No.2 though the document on the basis of which PW-1 has deposed does not bear the signature of defendant No.2 and that person has not been examined.

11. The above contention has no force as both the Courts below on the basis of the evidence of the witnesses and material available on record have arrived at the conclusion that the defendant No.1 inducted defendant No.2 as sub tenant on the monthly rent of Rs. 750/-, can not be assailed in the second appeal.

12. The third ground raised by the appellants/defendants is that both the Courts below have erred in arriving at the conclusion that the plaintiff bonafidely required the suit accommodation for the purpose of opening a shop for his son Anil Kumar and also for the residential purpose as from the bare perusal of the plaint it is evident that the necessity of the suit accommodation is not bona fide but it was a mere desire. The attention was drawn to the pleadings in paragraph 9 of the plaint wherein it is stated that the son of the plaintiff namely Anil Kumar wants the suit house to open the electrical shop and further to reside in the suit accommodation and for that purpose the same was required by the plaintiff as he had no other alternative accommodation available in Korba town. He further submits that want/desire can not be a bona fide requirement as the defendant can not be evicted simply on the desire of the landlord.

13. On the other hand learned counsel for the respondents submits that the desire of the plaintiff is based on necessity for opening a shop and also for the residence of the plaintiff and in this regard reference to the admission of defendant No.1 in paragraphs 15,19 and 20 of the statement recorded in the Court, has been made wherein the defendant has admitted that son of the plaintiff Anil Kumar is engaged in the training of electrical appliances in Korba as the

prospects of business are more in Korba and the necessity of the plaintiff for the aforesaid purpose has not been denied.

14. Thus in view of the facts mentioned above both the Courts below have not committed any illegality in arriving at the conclusion that the suit accommodation is required for the bona fide need of residence and shop for the son of the plaintiff namely Anil Kumar. Learned counsel for the appellants relied on the decision of the Supreme Court in the matter of **Mst. Bega Begum and others Vs. Abdul Ahad Khan (dead) by LRs and others reported in AIR 1979 SC 272** and submits that in the said judgment distinction has to be made between the desire and need. However, in the present case the need of the plaintiff is well established and the same is admitted by the defendant also. He further submitted that son of the plaintiff is living separately and therefore, the need of the son can not be considered to be the need of the plaintiff and in support of this contention he relies on the judgment of the Supreme Court in the matter of **Lalchand Choithram Sindhi Vs. Laxmandas Narayandas Sindhi reported in 1992 MPLJ 352** wherein it is held that where son is separate, he could not be treated as part of the family and the suit for bona fide requirement under section 12 (1) ~~(a)~~ (e) & (f) of the Act can not be decreed under such circumstances. However, in the present case, there is no material available on record to show that the plaintiff's son is not the member of the plaintiff. It was not even the case of the defendant before the trial Court and no evidence has been led to this effect in the present matter and thus the objection of the defendant in this regard is also not maintainable.

15. Learned counsel for the appellants has also challenged the judgment of the first Appellate Court by which the appellate Court has reversed the finding of the trial Court that the tenant/defendant invested Rs. 50,000/- in repair work of the house. He further submitted that the trial Court on the basis of the material available on record has arrived at the conclusion that Rs. 50,000/- were invested by the appellant in the repair work of the house with the prior permission of the landlord and the same has been erroneously reversed by the first appellate Court. However, the appellate Court has held that in the pleadings the defendant has stated that he invested Rs. 50,000/- in the repair work of the house but in his statement on oath he has stated that he invested Rs. 3-4 lakhs and thus there is contradiction in the pleading and the evidence of the defendant and further that he had not obtained any written permission from the plaintiff to make the repair work nor any permission has been sought from the local authorities for undertaking the said repair work in the suit house, and arrived at the conclusion that the factum of investment of Rs. 50,000/- by the defendant in the repair work of the suit house has not been proved. The above finding has been recorded in accordance with the material available on record and the same does not call for any interference.

16. Consequently, in view of the discussion made above this Court is of the view that there is no flaw in the impugned judgment and decree which prompts this Court to interfere with the same in this appeal. Accordingly, the appeal is liable for dismissal and the same is dismissed as such.

17. However, there shall be order as to costs.

Sd/-
Dhirendra Mishra
Judge

Jyotishi